

thereto, under seal of the House of Representatives, to the United States attorney for the District of Columbia to the end that the said persons named below may be proceeded against in the manner and form provided by law:

Dr. Edward K. Barsky, 54 East Sixty-first Street, New York City.

Dr. Jacob Auslander, 288 West Eighty-sixth Street, New York City.

Prof. Lyman R. Bradley, New York University, New York City.

Mrs. Marjorie Chodorov, 815 Park Avenue, New York City. . . .

MR. [VITO] MARCANTONIO [of New York]: Mr. Speaker, a point of order.

THE SPEAKER: The gentleman will state it.

MR. MARCANTONIO: Mr. Speaker, I make a point of order against the resolution on the ground that it seeks to have cited by this House individuals who were never subpoenaed, and never given an opportunity to appear and state whether or not they would or could comply with a subpoena. Under

those circumstances, I maintain that insofar as those individuals are concerned this matter is not properly before the House, in that neither the resolution nor the report from the committee sets forth that these individuals were subpoenaed, with the exception of Dr. Barsky. None of the others were subpoenaed; none of the others came before the committee and were accorded even an opportunity to say "yes" or "no" as to whether or not they had authority or control over the records and books and whether they could or would comply with the committee's subpoena. For that reason, as far as they are concerned, this resolution is not properly before this House.

THE SPEAKER: The Chair is ready to rule.

The report and the resolution are both before the House for its determination, and not the determination of the Chair. The Chair overrules the point of order.⁽⁶⁾

D. AUTHORITY IN CASES OF CONTEMPT

§ 17. In General

The House may try a contumacious witness at its bar⁽⁷⁾ or pur-

6. See § 17.4, *infra*, discussing adoption of an amendment deleting names of all persons who had not been subpoenaed.

7. *Parliamentarian's Note*: No contumacious witness has been tried at the bar of the House or Senate between 1936 and 1973. In *Groppi v Leslie*, 404 U.S. 496 (1972), a decision

which reviewed an action of the Wisconsin legislature but nonetheless rested on congressional precedents, the U.S. Supreme Court held that a witness may not be punished for contempt unless he has been accorded

sue procedures authorized by 2 USC §§192–194, criminal contempt statutes passed in 1857. These statutes reflected the need for more effective sanctions and a more appropriate forum to compel disclosure from a recalcitrant witness than merely ordering him held in custody until he agreed to testify. A major shortcoming of trial before the bar, in addition to the inappropriateness of the House's procedures when functioning as a judicial tribunal, and the lack of precedent on due process requirements, was that the witness could be imprisoned only as long as the House remained in session.⁽⁸⁾ The statute designates as a misdemeanor willful⁽⁹⁾ default or refusal to answer any question⁽¹⁰⁾ pertinent⁽¹¹⁾ to the question under inquiry⁽¹²⁾ by any

due process of law in a proceeding that leads to a finding of guilt. Although a legislative body does not have to accord all the procedural rights that a court must accord, it must grant notice and an opportunity for a hearing.

8. This description of the statute is taken from *Watkins v United States*, 354 U.S. 178, 207 n. 45 (1957).
9. See §7, *supra*, for a discussion of willfulness as it relates to intent of the witness.
10. See §20, *infra*, for a discussion of particular conduct as contumacious.
11. See §6, *supra*, for a discussion of pertinence.
12. See §1, *supra*, for a discussion of the permissible scope of legislative inquiry.

person who has been summoned as a witness⁽¹³⁾ by authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress. Punishment for violation of the statute is a fine of not more than \$1,000 nor less than \$100, and imprisonment for not less than one month nor more than 12 months. This statute has withstood constitutional challenges. The Supreme Court⁽¹⁴⁾ rejected the contention that reference to “any” matter under inquiry was fatally defective because it was unlimited in its extent. In reaching this conclusion the court stated that, “. . . statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible . . . avoid an unjust or absurd conclusion” and interpreted the word “any” to apply to “. . . matters within the jurisdiction of the two Houses of Congress, before them for consideration and proper for their action, to questions perti-

13. See §16, *supra*, for a discussion of summoning witnesses.

14. *In re Chapman*, 166 U.S. 661, 667 (1897). 2 Hinds' Precedents §1614.

nent thereto, and to facts or papers appearing therein.” In the same case the court found that the adoption of a statute designed to aid each House of Congress in the discharge of its constitutional functions did not constitute an improper delegation of power to punish contempt.

A court of appeals⁽¹⁵⁾ rejected the argument that 2 USC §192 violated the “necessary and proper” clause of article 1, section 8, because the inherent power of Congress to compel attendance by civil contempt was a better means to achieve the legitimate congressional end of obtaining information than was criminal contempt. The court found that the decision to add criminal contempt powers to its inherent powers to insure the cooperation of witnesses provided a rational basis on which to enact 2 USC §192. It was unwilling to strike down a means reasonably calculated to accomplish a valid congressional end simply because someone could conceive of an arguably better means to accomplish that end.

2 USC §193 provides that no witness is privileged to refuse to testify to any fact, or to produce any paper on the ground that his

testimony to such fact or his production of such paper may tend to disgrace him or otherwise render him infamous. 2 USC §194 establishes a procedure for certification of a contempt citation to the appropriate U.S. Attorney.⁽¹⁶⁾

The following steps precede judicial proceedings under 2 USC §§192–194: (1) approval by the committee, (2) calling up and reading the committee report on the floor,⁽¹⁷⁾ (3) either (if Congress is in session) House approval of a resolution authorizing the Speaker to certify the report to the U.S. Attorney for prosecution, or⁽¹⁸⁾ (if Congress is not in session) an independent determination by the Speaker to certify the report,⁽¹⁹⁾ (4) certification by the Speaker to the appropriate U.S. Attorney for prosecution.⁽²⁰⁾

The remaining sections in this chapter deal with proceedings

15. *United States v Fort*, 443 F2d 670, 676 (D.C. Cir. 1970), cert. denied, 403 U.S. 932 (1971).

16. See §22, *infra*, for a discussion of this statute.

17. See §§20.1, 20.3, 20.5, 20.7, 20.9, *infra*, for examples.

18. See §§20.2, 20.4, 20.6, 20.8, 20.10, and 22.1, *infra*, for examples.

19. See summary and analysis in §22, *infra*, for a discussion of *Wilson, et al. v United States*, which held that the Speaker, acting in the place of the House, must exercise independent judgment.

20. See all precedents in §22, *infra*, for examples.

after a committee has voted to cite a witness for contempt and prior to grand jury action.⁽¹⁾

Recommittal

§ 17.1 The House may recommit a resolution certifying the contempt of a committee witness to the committee which reported the contumacious conduct.

On July 13, 1971,⁽²⁾ the House on a roll call vote recommitted a resolution certifying contempt of a witness before the Committee on Interstate and Foreign Commerce.⁽³⁾

1. For earlier precedents, see 2 Hinds' Precedents §§1597-1640, 3 Hinds' Precedents §§1666-1724, and 6 Cannon's Precedents §§332-353. For other materials, see Goldfarb, Ronald L., *The Contempt Power*, Columbia University Press, N.Y., 1963 (this work also discusses contempt of judicial proceedings); Sky, T., *Judicial Reviews of Congressional Investigations—Is There an Alternative to Contempt?* 31 Geo. Wash. L. Rev. 399 (1962); Beck, Carl, *Contempt of Congress, A Study of the Prosecutions Initiated by the Committee on UnAmerican Activities, 1945-1957*, The Hauser Press, New Orleans, 1959; and Willis, *Power of Legislative Bodies to Punish for Contempt*, 2 Ind. L. J. 61 (1957).
2. 117 CONG. REC. 24723, 24752, 24753, 92d Cong. 1st Sess.
3. The Committee on Interstate and Foreign Commerce recommended the

MR. [HARLEY O.] STAGGERS [of West Virginia]: Mr. Speaker, I offer a privileged resolution, by direction of the Committee on Interstate and Foreign Commerce, and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 534

Resolved, That the Speaker of the House of Representatives certify the report of the Committee on Interstate and Foreign Commerce of the House of Representatives as to the contumacious conduct of the Columbia Broadcasting System, Incorporated, and of Dr. Frank Stanton, its President, in failing and refusing to produce certain pertinent materials in compliance with a subpoena *duces tecum* of a duly constituted subcommittee of said committee served upon Dr. Stanton and the Columbia Broadcasting System, Incorporated, and as ordered by the subcommittee, together with all the facts in connection therewith, under the seal of the House of Representatives, to the United States Attorney for the District of Columbia, to the end that Dr. Frank Stanton and the Columbia Broadcasting System, Incorporated, may be proceeded against in the manner and form provided by law.

THE SPEAKER:⁽⁴⁾ The gentleman from West Virginia (Mr. Staggers) is recognized for one hour. . . .

MR. STAGGERS: Mr. Speaker, I move the previous question on the resolution.

contempt citation by a vote of 25 to 23, in an executive session on July 1, 1971. See 117 CONG. REC. 24723, 92d Cong. 1st Sess., July 13, 1971.

4. Carl Albert (Okla.).

The previous question was ordered.

MOTION TO RECOMMIT OFFERED BY
MR. KEITH

MR. [HASTINGS] KEITH [of Massachusetts]: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER: Is the gentleman opposed to the resolution?

MR. KEITH: I am, Mr. Speaker.

THE SPEAKER: The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Keith moves to recommit House Resolution 534 to the Committee on Interstate and Foreign Commerce.

THE SPEAKER: Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

THE SPEAKER: The question is on the motion to recommit.

The question was taken; and on a division (demanded by Mr. Keith), there were—ayes 151, noes 147.

MR. STAGGERS: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered. . . .

The question was taken; and there were—yeas 226, nays 181, answered “present” 2, not voting 24, as follows: . . .

So the motion to recommit was agreed to.

§ 17.2 The House rejected a motion to recommit to a select committee a privileged resolution from the Committee on Un-American Activities which authorized the

Speaker to certify a contempt citation to the U.S. Attorney.

On Oct. 18, 1966,⁽⁵⁾ the House by a roll call vote of 90 yeas, 181 nays, and 161 not voting, rejected a motion to recommit to a select committee a privileged resolution authorizing the Speaker to certify a committee report to the U.S. Attorney. The report cited Milton Mitchell Cohen in contempt for refusal to answer questions before the Committee on Un-American Activities. The select committee would have been instructed to examine the sufficiency of the citation.⁽⁶⁾

PROCEEDINGS AGAINST MILTON
MITCHELL COHEN

MR. [EDWIN E.] WILLIS [of Louisiana]: Mr. Speaker, I offer a privileged resolution (H. Res. 1060) from the Committee on Un-American Activities and ask for its immediate consideration.

5. 112 CONG. REC. 27448, 27484, 27485, 89th Cong. 2d Sess.

6. See also, for example, 112 CONG. REC. 27511, 27512, 89th Cong. 2d Sess., Oct. 18, 1966, for rejection on a roll call vote of 54 yeas to 182 nays of a motion by Mr. Sidney R. Yates (Ill.), to recommit to a select committee privileged H. Res. 1062, authorizing the Speaker to certify to a U.S. Attorney H. REPT. No. 2306, relating to the refusal of Dr. Jeremiah Stamler to testify before the Committee on Un-American Activities.

The Clerk read the resolution, as follows:

H. RES. 1060

Resolved, That the Speaker of the House of Representatives certify the report of the Committee on Un-American Activities of the House of Representatives as to the refusals of Milton Mitchell Cohen to answer questions pertinent to the subject under inquiry before a duly authorized subcommittee of the said Committee on Un-American Activities, and his departure without leave, together with all the facts in connection therewith, under the seal of the House of Representatives, to the United States attorney for the northern district of Illinois, to the end that the said Milton Mitchell Cohen may be proceeded against in the manner and form provided by law. . . .

The previous question was ordered.

THE SPEAKER:⁽⁷⁾ The question is on the resolution.

For what purpose does the gentleman from Massachusetts rise?

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER: Is the gentleman opposed to the resolution?

MR. CONTE: I am, Mr. Speaker.

THE SPEAKER: The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Conte moves to recommit the resolution of the Committee on Un-American Activities to a select committee of seven Members to be appointed by the Speaker with instructions to examine the sufficiency of the contempt citations under existing rules of law and relevant judicial

decisions and thereafter to report it back to the House, while Congress is in session, or, when Congress is not in session, to the Speaker of the House, with a statement to its findings.⁽⁸⁾

THE SPEAKER: Without objection, the previous question is ordered.

The question is on the motion to recommit.

The question was taken.

MR. CONTE: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: Evidently a quorum is not present.

The Doorkeeper will close the doors; the Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

The question was taken; and there were—yeas 90, nays 181, not voting 161, as follows: . . .

The result of the vote was announced as above recorded.

The doors were opened.

THE SPEAKER: The question is on the adoption of the resolution.

The question was taken, and the Speaker announced that the ayes appeared to have it.

MR. [JAMES C.] CLEVELAND [of New Hampshire]: Mr. Speaker, on that I demand the yeas and nays.

8. See 112 CONG. REC. 27461, 27462, 89th Cong. 2d Sess., Oct. 18, 1966, for a statement in which Mr. Conte indicated that a reason for the motion to recommit was the lawsuit filed by the witness, Milton Mitchell Cohen, and others challenging the constitutionality of the authority and procedures of the Committee on Un-American Activities.

7. John W. McCormack (Mass.).

The yeas and nays were refused.

So the resolution was agreed to.

A motion to reconsider was laid on the table.

Divisibility

§ 17.3 The Speaker stated that a resolution directing the Speaker to certify a report citing certain witnesses for contempt for refusing to testify and submit subpoenaed materials was not divisible.

On May 28, 1936,⁽⁹⁾ Speaker Joseph W. Byrns, of Tennessee, responded to a parliamentary inquiry regarding divisibility of a resolution authorizing the Speaker to certify to the U.S. Attorney House Report No. 2857.

MR. [C. JASPER] BELL [of Missouri]: Mr. Speaker, by direction of the select committee, I now present a privileged resolution and send it to the Clerks desk and ask that it be read.

The Clerk read as follows:

HOUSE RESOLUTION 532

Resolved, That the Speaker of the House of Representatives certify the report of the Select Committee to Investigate Old Age Pension Plans as to the willful and deliberate refusal of Francis E. Townsend, Clinton Wunder, and John B. Kiefer to testify before said committee, together with all the facts in connection therewith, under seal of the House of Representatives, to the United

States attorney for the District of Columbia, to the end that the said Francis E. Townsend, Clinton Wunder, and John B. Kiefer may be proceeded against in the manner and form provided by law. . . .

THE SPEAKER: The Chair recognizes the gentleman from Missouri.

MR. [EVERETT M.] DIRKSEN [of Illinois]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. DIRKSEN: Is the resolution divisible as to the three gentlemen named?

THE SPEAKER: It is not.⁽¹⁰⁾

Deletion of Names of Persons Not Subpenaed

§ 17.4 The House amended a resolution citing persons for contempt by deleting the names of all who had not been subpoenaed, leaving only the name of Dr. Edward K. Barsky.

On Mar. 28, 1946,⁽¹¹⁾ the House by voice vote agreed to an amendment deleting the names of all persons who had not been subpoenaed from House Resolution 573, authorizing the Speaker to certify to the U.S. Attorney the report of the Committee on Un-American

10. See § 17.4, *infra*, in which all but one of the names of persons listed in such a resolution were deleted by amendment.

11. 92 CONG. REC. 2745, 2749, 79th Cong. 2d Sess.

9. 80 CONG. REC. 8222, 74th Cong. 2d Sess.

Activities regarding refusal to produce requested records, books, and papers.

MR. [JOHN S.] WOOD [of Georgia]: Mr. Speaker, I offer a privileged resolution (H. Res. 573) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That the Speaker of the House of Representatives certify the report of the House Committee on Un-American Activities as to the willful and deliberate refusal of the following persons to produce before the said committee for its inspection the books, papers, and records of an unincorporated organization known as the Joint Anti-Fascist Refugee Committee, with offices at 192 Lexington Avenue, New York, N.Y., together with all the facts relating thereto, under seal of the House of Representatives, to the United States attorney for the District of Columbia to the end that the said persons named below may be proceeded against in the manner and form provided by law:

Dr. Edward K. Barsky, 54 East Sixty-first Street, New York City.

Dr. Jacob Auslander, 286 West Eighty-sixth Street, New York City.

Prof. Lyman R. Bradley, New York University, New York City.

Mrs. Marjorie Chodorov, 815 Park Avenue, New York City. . . .

MR. WOOD: Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Wood: Strike from the resolution the names of all individuals except that of Edward K. Barsky.

The amendment was agreed to.

Parliamentarian's Note: Dr. Barsky was the only person who

had been subpoenaed. All the others, members of the executive board of the organization, were cited in the report and resolution because the board refused to permit Dr. Barsky to produce the subpoenaed materials. Mr. Wood was Chairman of the Committee on Un-American Activities.⁽¹²⁾

§ 18. Time for Consideration

Reports

§ 18.1 A report from a committee relating to the refusal of a witness to produce certain subpoenaed documents is privileged; it is presented and read before a resolution is offered directing the Speaker to certify the refusal to a U.S. Attorney.

On Aug. 23, 1960,⁽¹³⁾ Speaker Sam Rayburn, of Texas, indicated the order in which to read a report and resolution relating to contempt of a witness.

MR. [EMANUEL] CELLER [of New York]: Mr. Speaker, I rise to a question

12. See 92 CONG. REC. 2744, 2745, 79th Cong. 2d Sess., for the text of the report and § 19.4, *infra*, for a discussion of this incident as it relates to a point of order challenging citation of persons who had not been subpoenaed.

13. 106 CONG. REC. 17278, 86th Cong. 2d Sess.